
(1993) 03 MAD CK 0047
In the Madras High Court

Indian Bank

APPELLANT

Vs

K. Usha and Others

RESPONDENT

Date of Decision : 16-03-1993

Acts Referred:

Banking Regulation Act, 1949 — Section 45
Constitution of India, 1950 — Article 311
Industrial Disputes Act, 1947 — Section 18(1)

Citation : (1993) 1 LW 449 : (1993) 2 MLJ 186

Hon'ble Judges : Srinivasan, J

Bench : Division Bench

Judgement

Srinivasan, J.—The common question raised in these writ appeals is whether the first respondent in W. A. No. 733 of 1992 and the respondent in each of the other writ appeals, hereinafter referred to as "the writ petitioners", are entitled to be appointed by the appellant-Indian Bank hereinafter referred to as the "appellant-Bank", on compassionate grounds. The husband of the petitioner in W.P. No. 8668 of 1991 (W.A. No. 733 of 1992), father of the petitioner in W.P. No. 4589 of 1992 (W.A. No. 1543 of 1992), father of the petitioner in W.P. No. 4921 of 1992 (W.A. No. 1544 of 1992); father of the petitioner in W.P. No. 5285 of 1992 (W.A. No. 1545 of 1992); father of the petitioner in W.P. No. 5286 of 1992 (W.A. No. 1546 of 1992); father of the petitioner in W.P. No. 5288 of 1992 (W.A. No. 1547 of 1992) and the husband of the petitioner in W.P. No. 5287 of 1992 (W.A. No. 1548 of 1992) were employed in the Bank of Thanjavur Limited and they died in harness. The said Bank was amalgamated with the appellant-Bank on 20.2.1990 by a notification of scheme of amalgamation dated 19.2.1990. Prior to the amalgamation there was imposition of Moratorium on Bank of Thanjavur Limited with effect from 19.8.1989.

2. All the writ petitioners have claimed that they are entitled to be appointed by the appellant-Indian Bank as employees on compassionate grounds as their close relatives were employed in the Bank of Thanjavur Limited and died in harness. Excepting in the case of Shri Perumal, husband of Smt. P. Vasantha, the

respondent in W.A. No. 1548 of 1992, all the rest died before the imposition of moratorium. Four of the respondents (writ petitioners) had admittedly applied for employment to the Bank of Thanjavur, but their claim had not been considered. All the writ petitioners applied to the appellant-Bank after it took over on amalgamation. The question is whether the Bank is bound to consider the applications for appointment on compassionate grounds. The contention in short by the appellate-Bank is that the scheme of Amalgamation does not provide for appointment on compassionate grounds for close relatives of persons who died before amalgamation. It is also contended that the scheme provides only for the employees who were in service with the Bank of Thanjavur Limited at the time of amalgamation and not other persons who were not in service.

3. The relevant provisions in the scheme on which reliance is placed by the Bank read thus:

Clause (2): As from the date which the Central Government may specify for this purpose under Sub-section (7) of Section 45 of the said Act (hereinafter referred to as the prescribed date) "all rights, powers, claims, demands, interest, authorities, privileges, benefits, assets and properties" of the transferor bank, movable and immovable, including premises subject to all incidents of tenure and to the rents and other sums of money and covenants reserved by or contained in the leases or agreements under which they are held, all office furniture, loose equipment plant apparatus and appliances, books, paper stocks of stationery, other stocks and stores, all investments in stocks, shares and securities, all bills receivable in hand and in transit, all cash in hand and on current or deposit account (including money at call or short notice) with bank's bullion, all book debts, mortgage debts and other debts with the benefit of securities, or any guarantee therefor, all other if any, property rights and assets benefit of all guarantees in connection with the business of the transferor-bank shall, subject to the other provisions of this scheme, stand transferred to, and become the properties and assets of the transferee bank, and as from the prescribed date all the liabilities, duties and obligations of the transferor bank shall be and shall become the liabilities, duties and obligations of the transferee bank to the extent and in the manner provided hereinafter".

"Clause 10: All the employees of the transferor bank shall continue in service and be deemed to have been appointed by the transferee-Bank at the same remuneration and on the same terms and conditions of service as were applicable to such employees immediately before the close of business on 19th August, 1989". "Provided that the employees of the transfer or bank who have, by notice in writing given to the transferor or the transferee at any time before the expiry of one month next following the date on which this scheme has been sanctioned by the Central Government, intimated their intention of not becoming employees of the transferee-bank, shall be entitled to the payment of such compensation, if any, under the provisions of the Industrial Disputes Act, 1947, and such pension, gratuity, provident fund and other retirement benefits as may

be ordinarily admissible under the rules of authorisations of the transferor bank immediately before the close of business on 19th August, 1989.

4. The argument is that Clause 10 of the scheme refers to employees of the transferor-Bank which necessarily means the employees in service and not the deceased employees and Clause 2 refers only to the liabilities, duties and obligations of the transferee bank to the extent and in the manner provided in the scheme. According to learned Counsel for the appellant-Bank the scheme does not provide for appointment on compassionate grounds and any liability or obligation of the transferor bank vis-a-vis appointments on compassionate grounds is not fastened on or transferred to the transferee-Bank.

5. The contention of the writ petitioners is that there was a settlement u/s 18(1) of the Industrial Disputes Act, 1947, between the employees of the Bank of Thanjavur Limited and the Management in 1982 and that settlement continued to be subsisting at the time of amalgamation. The settlement provides for appointment on compassionate grounds in Clause 3 of the Memorandum of Settlement. It reads thus:

Employment on compassionate ground: It is mutually agreed that on an employee dying in harness or being permanently disabled while in service his legal heirs shall be appointed in the services of the Bank on compassionate grounds, if need be, relaxing at the discretion of the Management, the prescribed norms for recruitment for that post. Appointment on compassionate grounds shall not be made, if any legal heir of the deceased/disabled employee is already in the service of the Bank.

It is argued that the transferee-Bank, is by virtue of taking over the entire assets and liabilities of the transferor bank, bound by Clause 3 of the memorandum of settlement and therefore, to provide employment on compassionate grounds. This contention was accepted by a learned single Judge of this Court and the writ petitions were ordered in favour of the writ petitioners. It is the judgment of the learned single judge which is challenged before us.

6. The contention of the appellant-bank has already been set out. In answer to the settlement u/s 18(1) of the Industrial Disputes Act, the argument of the Bank's counsel is that any settlement u/s 18(1) is binding only on the parties thereto and it is not binding on the successor-in-interest. Reliance is placed on the distinction made by the said Act in the provisions u/s 18(3) and 18(1). It is pointed out that Section 18(3) provides for the settlement arrived at in the course of conciliation proceedings or industrial disputes being binding on all parties to the dispute and besides others on heirs, successors or assigns of the employer while there is no such provision in Sub-section (1) of Section 18. It is also contended that outside the scheme the transferee bank is not liable for any obligation or liability of the transferor-Bank.

7. The scheme of Amalgamation is drawn u/s 45 of the Banking Regulation Act, 1949. Sub-section (5) of Section 45 of the said Act sets out the matters for

which the scheme may contain provisions. Sub-section (5) states that the scheme may contain provisions for all or any one of the matters set out therein. Clause (i) relates to the continuance of the services of all the employees of the banking company (excepting such of them as not being workmen within the meaning of the Industrial Disputes Act, 1947 (14 of 1947) are specifically mentioned in the scheme) in the banking company itself on its reconstruction or, as the case may be, in the transferee bank at the same remuneration and on the same terms and conditions of service. A reading of Sub-sec. (5) of Section 45 shows that it is not necessary for a scheme to provide for all matters which are set out in the sub-section and it can provide for some of them. But if a provision is made with reference to the continuance of the services of all the employees of the banking company it shall not exclude workmen within the meaning of the Industrial Disputes Act. Thus, the object of the provision is to protect the rights of the persons who are governed by the Industrial Disputes Act.

8. Undoubtedly, the contention of learned Counsel for the appellant-Bank is correct in that, Clause 10 of the scheme relates only to employees in service at the time of amalgamation and it does not contemplate within its ambit persons already dead. But the provisions in the Banking Regulation Act, 1949, are not exhaustive. Section 2 of the said Act" reads that "the provisions of the Act shall be in addition to, and not, save as hereinafter expressly provided, in derogation of the Companies Act, and any other law for the time being in force." Thus the provisions of the Banking Regulations Act will be in addition to the provisions of the other laws unless it is expressly provided otherwise in the Act itself. Section 19(d) of the Specific Relief Act provides that specific performance of a contract entered into by a company which subsequently becomes amalgamated with another company can be enforced against the new company. It is converse to Section 15(g) of the same Act. Under that section when a company has entered into a contract and subsequently becomes amalgamated with another company, the new company which arises out of the amalgamation is entitled to obtain specific performance of a contract in the name of the old company. Thus a statute which is already in existence has provided for enforcement of contracts entered into by the old. company which gets amalgamated with a new company.

9. The provisions of the scheme should be understood in the light of Sections 2 and 45 of the Banking Regulations Act. Clause 2 of the scheme would only mean that with respect to matters provided in the scheme the liabilities, etc., of the transfer or-Bank are limited to the extent set out therein. That does not absolve the transferee-Bank from other contractual obligations of the transferor-Bank which are not covered by the scheme, if such obligations are made binding on the transferee-bank because of other statutory provisions. One such matter is appointment of legal heirs of deceased employees on compassionate grounds. The Bank of Thanjavur Limited was bound by Section 18 (1) of the Industrial Disputes Act to honour Clause 3 of the Memorandum of Settlement between the management and the employees which was in force at the time of the amalgamation. Section 19(d) of the Specific Relief Act made the said contractual

obligations of the Bank of Thanjavur Limited binding on the appellant-Bank and enforceable against it.

10. Here is a contract between the employees on the one hand of Bank of Thanjavur Limited and the Management of the Bank on the other. That there is such a contract is not in dispute as the counter-affidavit filed in the writ petitions by the bank clearly admitted the Same. A printed Copy of the Memorandum of Settlement has been produced before us. It is seen from the preamble that parties to the settlement are the Management of Bank of Thanjavur Limited., Thanjavur and all its workmen employed in all the branches and offices of the Bank duly represented by Bank of Thanjavur Employees" Union. No doubt a contention was urged in the course of arguments that it is not known whether the writ petitioners" relatives were members of the Bank of Thanjavur Employees" Union. There is no merit in that contention as the preamble clearly says that all the workmen employed in all the branches and offices of the Bank are duly represented in the settlement.

11. The next question will be whether a contract providing for employment can be enforced. The question has arisen in several cases and it is now settled law that there are three "exceptions to the general rule that contract of service cannot be enforced, viz.,

(1) Cases falling under Article 311 of the Constitution of India;

(2) Cases covered by the industrial law and

(3) Cases in which a statutory body acts in breach of violation of the mandatory provisions of a statute. (Vide Vaish Degree College v. Lakshminarain AIR 1976 S.C. 888

The case on hand will fall under categories (2) and (3) as the matter is covered by the industrial law and the appellant-bank is a statutory authority. Hence Clause 3 of the memorandum of settlement referred to earlier is enforceable against the appellant-Bank.

12. The next question will be whether the writ petitioners are entitled to enforce the contract. Here again, the law is well settled. Though the respondents themselves are not parties to the contract they are beneficiaries under the contract and in fact, the contract in this case, viz., to provide employment for the legal heirs of an employee who died in harness, can be enforced only by the legal heirs and the time for performance of such contract arises only on the death of one of the parties to the contract. It could even be said that the other party, viz., the employer is bound in trust to confer the benefit on the beneficiaries of the contract viz.; the legal heirs of the employees.

13. Turning to the provisions of Section 18(1) of the Industrial Disputes Act the contention of the appellant-Bank is that a settlement under Sub-section (1) of Section 18 which was not arrived in course of conciliation proceedings is binding only on the parties thereto. The settlement in the present case is to provide for

employment to legal heirs of an employee of the Bank of Thanjavur Limited. As stated already this settlement can be enforced only when the employee dies by a legal heir of the employee. By the very nature of the settlement it is enforceable only by a person who is not a party to the settlement co nominee. Hence there is no merit in the plea that Section 18(1) makes a settlement binding only on the parties to the agreement, otherwise, if the contention of learned Counsel is accepted. Clause 3 of the Memorandum of Settlement will be a dead letter even at its inception.

14. In the instant cases the contention urged by the appellant-Bank as against the claim made by the writ petitioners are not acceptable. In the view we have taken it is not necessary for us to refer to the various rulings cited by learned Counsel on both sides as none of them has any direct bearing on the question.

15. Having concluded that, it is open to the legal heirs of the employees to seek appointment on compassionate grounds the question next arises with reference to each of the claimants as to whether the said claimant is eligible for such compassionate appointment. Learned single Judge has not gone into that question. While in W.P. No. 8668 of 1991 he has directed the appellant-Bank to give employment to the writ petitioner at once and also fixed a time limit of six months, in the other writ petitions he has directed the appellant-Bank to consider the applications for compassionate appointment within a particular time.

16. Learned Counsel for the writ petitioners contend that the language of Clause 3 of the memorandum of settlement is mandatory and the Bank shall appoint the legal heirs of the employees dying in harness. No doubt on a cursory reading it may appear that the terms of the clause are not only mandatory but very wide in scope. But on a proper construction of the clause it can be easily discerned that appointments can be made only if the applicants satisfy certain conditions. The clause as such does not prescribe any condition or qualification but the crucial expression, "on compassionate grounds" indicates beyond doubt that any legal heir of an employee dying in harness is not entitled as of right to get appointed in the Bank. If as desired by learned Counsel for the writ petitioners, the clause is literally interpreted it would mean that all legal heirs of an employee dying in harness or permanently disabled while in service shall be appointed in the services of the Bank. Such an interpretation would lead to disastrous results and may even create a sort of hereditary right to get appointments which would be violative of Article 14 of the Constitution. In fact, learned Counsel for the writ petitioners frankly submitted that such a wide interpretation is not warranted. However they contend that the Bank is not entitled to prescribe conditions according to its whims and fancies. We are of the view that there will be no difficulty in practice if the principle underlying appointments on compassionate grounds as laid down by the Supreme Court is borne in mind. In *Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others*, , the basis of compassionate appointments is set out succinctly in the following words:

The purpose of providing appointment on compassionate ground is to mitigate

the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such cases pending for years.

Thus the basic requirement is that the deceased employee should have been the bread earner in the family. The Bank is, therefore, entitled and bound to consider the relevant facts and circumstances of each case such as

- (a) the deceased employee being the breadwinner of the family;
- (b) family being affluent and not in distress;
- (c) other members of the family being already employed;
- (d) unexplained delay in making the application for appointment.

(The list is not exhaustive and each case must be decided on its facts and circumstances).

Clause 3 of the memorandum of settlement between the management of the Bank of Thanjavur and its employees should be understood in the light of the above principles and whenever an application for appointment on compassionate grounds is made by a legal heir of a deceased employee the Bank shall take into account the relevant circumstances as stated above. It should not also be forgotten that Clause 3 contains a provision for relaxation at the discretion of the management the prescribed norms for recruitment for the post. Such discretion should be exercised by the management judiciously as may be warranted by the facts and circumstances of that case.

17. In these matters the applications of the writ petitioners have not been considered by the Bank and excepting in one case the learned single Judge has directed such consideration of the applications by the Bank. We discussed the matter with learned-counsel on both sides and suggested that the eligibility of the writ petitioners can be decided here itself if all the relevant facts are placed before us, as otherwise there may be a fresh crop of writ petitions, if ultimately the appellant-Bank rejects the applications of some of them on other grounds of non-eligibility. Counsel agreed to this course and placed all the facts before Court. We will consider the same in each case.

18. W.A. No. 733 of 1992: The writ petitioner's husband died on 25.3.1989 and she applied to the Bank of Thanjavur on 12.4.1989 for appointment on compassionate grounds. The application was not considered and was pending at the time of amalgamation. It is seen that she has a daughter aged about six years at the time of the writ petition. It is stated by her that she has passed S.S.L.C. and was eligible for collegiate course. After the amalgamation she filed an application to the appellant-Bank on 7.6.1990. Thus she has not been guilty of any delay and she has acted very promptly in the matter of applying for employment. She has stated that her husband was the only earning member of the family and there was no other source of income. We do not find any reason

whatever to reject her claim for appointment on compassionate grounds. The direction given by the learned single Judge is confirmed. It is also represented that she has already been given the appointment and she has taken charge of duty on 15.3.1993.

19. W.A. No. 1543 of 1992: The writ petitioner's father died on 30.7.1988. The appellant-Bank has stated that his application for appointment made to the Bank of Thanjavur is not available. The appellant-Bank does not admit the claim of the writ petitioner that such application was made. The writ petitioner stated that nobody is employed in his family and there is no other source of income. He has studied Higher Secondary Course and at the time of the filing of the writ petition he was undergoing B.Sc.(Maths) course. He applied to the appellant-Bank on 12.12.1990. He has submitted the application within a short time after the amalgamation. On the facts of the case we hold that he is eligible for appointment on compassionate grounds.

20. W.A. No. 1544 of 1992: The father of the writ petitioner died on 2.1.1989 and the writ petitioner applied on 22.2.1989 to the Bank of Thanjavur for appointment. That application was not disposed of before the amalgamation. Again he applied to the appellant-Bank on 12.12.1990. According to his affidavit, his father left two sons and a widow. He has stated that there was no other working member in his family and no other source of income. In fact, he has not mentioned anything about his educational qualifications in the affidavit. In the facts and circumstances of the case he is eligible for appointment on compassionate grounds.

21. W.A. No. 1545 of 1992: The father of the writ petitioner died on 23.10.1985. No doubt there is a lapse of four years and odd after the death of the father and before the amalgamation. He filed the application soon after the amalgamation, i.e., on 8.3.1990. It is seen from his affidavit that he is the only son of his father who left three daughters and a widow. Nobody else is employed in his family and he has studied upto S.S.L.C. He has stated that the family has no other source of income. Hence he is fit to be appointed on compassionate grounds.

22. W.A. No. 1546 of 1992: The writ petitioner lost her father on 23.9.1989. Her father left three daughters and a widow. There is no male member in the family. She has studied upto Plus-2 and she is qualified in typewriting Higher both in English and Tamil. She has been working as typist since October, 1986 on daily wages basis at the Central Office, Bank of Thanjavur Ltd., Thanjavur. Thus she can even come under Clause 10 of the scheme, but she had not rested her claim on that basis. She is undoubtedly entitled to be appointed on compassionate grounds, if not on any other ground.

23. W.A. No. 1547 of 1992: The father of the petitioner died on 17.7.1987. His father has left two sons including the petitioner, two daughters and a widow. Nobody is employed in the family. He has studied upto Higher Secondary Course. He was employed as sub-staff in the Bank of Thanjavur for more than 900 days

at various intervals. It may be possible for him to claim the benefit of Clause 10 of the scheme also. Thus he is certainly to be appointed on compassionate grounds.

24. W.A. No. 1548 of 1992: The writ petitioner lost her husband on 4.9.1989. Though there was a dispute as to the date of death of the husband in the counter affidavit of the appellant-Bank wherein the date was mentioned as 7.4.1987 it is now stated by learned Counsel for the appellant-Bank that he accepts the date of death as 4.9.1989. Learned Counsel for the writ petitioner has produced the death certificate to prove the date of death of the petitioner's husband as 4.9.1989. This petitioner stands apart from the other petitioners inasmuch as her husband died after the imposition of moratorium. We have already seen the relevant clause in the scheme, viz., Clause 10. As per that clause all the employees of the transferor-Bank shall be deemed to have been appointed by the transferee-Bank on 19th August, 1989. The husband of the petitioner having died only on 4.9.1989 he was deemed to be the employee of the appellant-Bank at the time of his death. Hence the petitioner is entitled to claim employment on compassionate grounds irrespective of the question of law raised by the appellant-Bank. Incidentally, it may be mentioned that the appellant-Bank has a scheme of its own for making appointments on compassionate grounds of legal heirs of its employees. But the said scheme is not applicable as such to the writ petitioner as in Clause 10 of the scheme the employees of the transferor-Bank will be governed by the same terms and conditions of service as are applicable to them on 19.8.1989 for a period of three years. The writ petitioner has studied upto 5th Standard and she has two minor daughters and one minor son. She has no other source of income. Hence she is entitled to be appointed on compassionate grounds. Even if her educational qualification is below the minimum required by the appellant-Bank the latter shall grant a relaxation of the conditions in her case having regard to the special facts and circumstances of the case.

25. In all these cases, the writ petitioners excepting the petitioner in W.P. No. 8668 of 1991, shall produce the relevant certificates to prove their educational qualifications before the appellant-Bank. The latter shall give them appointment commensurate with their qualifications.

26. In the result the appeals are dismissed. In so far as W.A. Nos. 1543 to 1548 of 1992 are concerned the direction given by the learned single Judge is modified and the appellant-Bank is directed to appoint the writ petitioners within a period of three (3) months from to-day. Appointments shall be to such posts as are commensurate with their respective qualifications and as indicated above. There will be no order as to costs.